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No. 838

In the Supreme Court of the United States

OCTOBER TERM, 1938

F. H. E. OIL COMPANY, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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We do not oppose the granting of a writ of certiorari in this case.

Although we believe the decision below to be correct, we believe, with the petitioner, that there is a direct conflict between the decision in the present case and *Commissioner* v. *Wilshire Oil Co.*, 95 F. (2d) 971 (C. C. A. 9th). On June 30, 1938, the Government filed a petition for a writ of certiorari in the latter case (Nos. 163–165, present Term). On March 30, 1939, the Government filed a supple-

mental memorandum in that case calling to the attention of the Court the decision in the present case. The Government's petition was granted on April 3, 1939.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

APRIL 1939.

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